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**FEB 03 2006**

**OFFICE OF PETITIONS**

**ON PETITION**

In re Application of :  
Stuart Gerald Stubblebine :  
Application No. 09/840,230 :  
Filed: April 24, 2001 :  
Attorney Docket No. 2455-4230US3 :

This is a decision on the petition under 37 CFR 1.137(b), filed November 14, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b)<sup>1</sup> must be accompanied by: (1) the required reply,<sup>2</sup> unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item 1.

It is noted that an amendment, in response to the final Office action mailed June 17, 2004, was included with the petition filed on November 14, 2005. However, the amendment is considered non-responsive, since it does not place the application in condition for allowance. See the attached copy of an Advisory Action. The proposed reply required for consideration of a petition to revive this application must be a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)), an

<sup>1</sup> As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

<sup>2</sup> In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

amendment that *prima facie* places the application in condition for allowance, or the filing of a submission under 37 CFR 114 (RCE) or a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

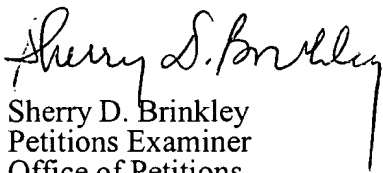
Further correspondence with respect to this matter should be addressed as follows:

By mail:                   Mail Stop PETITION  
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                              Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

  
Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

Attachment: Advisory Action

cc:     HENRY BRENDZEL  
       PO BOX 574  
       SPRINGFIELD, NJ 07081